WP(C) 620/2007

BEFORE

HON'BLE JUSTICE RANJAN GOGOI

Heard Sri N.Dutta, learned senior counsel for the writ petitioner and Sri K.Das, learned Standing Counsel, B.T.C. appearing for the Respondent Nos.3 and 4. Also heard Sri BJ Ghosh, learned Government Advocate, Assam, who has appeared on behalf of the Respondent Nos.1 and 2.

Though it is not clear as to whether the Respondent No.5 has been served, as the order that is contemplated to be passed would not in any way be adverse to the Respondent No.5, the Court finds no impediment in disposing of the writ petition at the admission stage.

The petitioner, who was appointed as an Agricultural Extension Officer in the Irrigation Department of the Government of Assam on 31.7.1997 was posted/sent on deputation to the Panchayat & Rural Development Department (hereinafter referred to as the P & RD Department). This was by an order dated 14.3.2001. While in the P & RD Department the petitioner was allowed to hold charge of the post of Senior Block Development Officer, Dotma Development Block in addition to his own duties by an order dated 18.1.2002. The claim made in the writ petition is for a direction to the State Respondents to treat the petitioner as being absorbed in the P & RD Department by virtue of the Notification dated 19.7.1997, which has been enclosed as Annexure-E to the writ petition. By the aforesaid notification it has been stipulated that the maximum period of deputation will be for a period of 5(five) years after which a deputed incumbent is to revert to his parent department failing which it is to be understood that such an incumbent has been permanently absorbed in the deputed organization/department. In the writ petition filed, an order dated 29.1.2007 (Annexure-H to the writ petition), by which the Respondent No.5 has been posted as the Block Development Officer, Dotma Development Block in place of the petitioner, has also been questioned.

The State Respondents have filed an affidavit wherein in paragraph 4 it has been contended that though the petitioner, by order dated 14.3.2001, was posted/deputed to the P & RD Department from the Irrigation Department, the said deputation is not covered by the Notification dated 19.7.1997 which speaks of deputation of State Government Employees either to the Central Government or other State Governments or incorporated bodies under the State/Central Governments. In other words, it has been contended by the Respondents that the posting of a Government Servant from one department to another under the same State Government is not covered by the Notification dated 19.7.1997 so as to confer on the deputed employee a right to claim permanent absorption in the department to which he is deputed on the expiry of 5(five) years. In so far as the posting of the Respondent No.5 against the post held by the petitioner, i.e., Block Development Officer, Dotma Development Block as made by order dated 19.1.2007 is concerned, the Respondents have stated, in the affidavit filed, that the petitioner cannot be understood to have any right to hold the said post of Block Development Officer.

I have read and considered the terms of the Government Notification dated 19.7.1997, which has been enclosed as Annexure-E to the writ petition. The said notification makes it abundantly clear that the deputation of a State Government employee to the Central Government or other State Government or incorporated bodies is what is visualized and contemplated by the said Notification. The deemed absorption, after expiry of 5(five) years on deputation, as contemplated by the Notification dated 19.7.1997, therefore, has to be understood in the context of a deputation contemplated by the Notification dated 19.7.1997. In the present case the petitioner was earlier an employee of the Irrigation Department. By order dated 14.3.2001 his services as an Agricultural Extension Officer was lent to the P & RD Department. He was thereafter allowed to hold the charge of the Office of the Senior Block Development officer, Dotma Development Block, in addition to his own duties, by the order dated 18.1.2002. In this manner the petitioner has continued to work in the P & RD Department till date. The lending of the services of the petitioner by the Irrigation to the P & RD Department of the State of Assam, though is a kind of deputation, yet, it will not be covered by the Office Memorandum dated 19.7.1997. If that be so, the petitioner cannot be understood to

have any vested right of deemed absorption in the P & RD Department on completion of 5(five) years of service in the said department. On the strength of the Notification dated 19.7.1997. The relevant Fundamental Rules, i.e., FR 14(a) read with the provisions contained in FR 109 to 127 also not having provided for any deemed absorption, the claims made to the above effect are not legally sustainable.

The services of the petitioner having been lent to the P & RD Department and he having been allowed to discharge his duties as an Agricultural Extension Officer in the P & RD Department in addition to holding charge of the post of Senior Block Development Officer, the petitioner cannot be understood to have any legal right to continue to hold the post of Senior Block Development Officer, as claimed by him. In the above situation, the Court cannot find any fault with the order dated 29.1.2007 by which the Respondent No.5 has been allowed to hold charge of the said post of Senior Block Development Officer.

In the light of the foregoing discussions, the Court cannot hold that the claim of the petitioner for permanent absorption in the P & RD Department would be covered by the Office Memorandum dated 19.7.1997 so as to warrant the view that the Respondents should be directed to treat the petitioner as being deemed to be absorbed in the P & RD Department. However, as the petitioner has continued to remain in the P & RD Department since the year 2001 and over 6(six) years have elapsed in the meantime, if the petitioner so desires and files an application for regular absorption, such application will receive the due and appropriate consideration of the authorities in accordance with law

Beyond the above no order can be visualized in the writ petition. Writ petition shall stand disposed of in terms of the above directions.